

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

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UNITED STATES OF AMERICA,

Plaintiff,

v.

ELISKIM, INC., and

CITY OF GENEVA, OHIO

Defendants.

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Civil Action No. \_\_\_\_\_

Judge \_\_\_\_\_

**CONSENT DECREE**

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UNITED STATES OF AMERICA,

V.

Civil Action No.

CITY OF GENEVA, OHIO

Judge \_\_\_\_\_

Defendants.

## I. BACKGROUND

B. The Defendants in this matter, Eliskim, Inc. (“Eliskim”) and the City of Geneva, Ohio (“City”) (collectively “Settling Defendants”), have entered into this Consent Decree, but do not admit any liability to the United States arising out of the transactions or occurrences alleged

in the complaint.

C. On or about January 22, 1997, EPA, Eliskim, and the City's manager signed an "Administrative Order by Consent" ("AOC") pursuant to Sections 106(a), 107, and 122 of CERCLA, 42 U.S.C. §§ 9606(a), 9607, and 9622. The AOC was amended by mutual consent of the parties thereto on or about November 30, 1998. As amended, the AOC required, *inter alia*, that the Settling Defendants: (1) conduct a removal action of hazardous substances at the Site; (2) reimburse EPA for the \$467,053.38 in past response costs that the Agency had incurred at the Site through September 30, 1996; and (3) pay, on an annual basis, EPA's "oversight costs," meaning the response costs EPA paid or incurred in connection with the Site after September 30, 1996.

D. On May 22, 2001, EPA determined that one or more of the Settling Defendants "fully performed" the removal action required by the AOC. In 2004, EPA completed groundwater monitoring at the Site that was intended to ensure the efficacy of the removal action. One or more of the Settling Defendants also reimbursed EPA for \$467,053.38 in past response costs, as required by the AOC. In total, Eliskim reports that it has spent approximately \$8.7 million on clean-up related activities at the Site, and the City states that it has provided up to \$160,000 worth of in-kind services to support the removal action at the Site.

E. However, beginning in November 2000, Settling Defendants did not fully pay EPA's oversight costs under the AOC. On February 6, 2001, Eliskim's parent corporation, then named the Sunbeam Corporation ("Sunbeam"), and its active subsidiaries filed a petition for reorganization under Chapter 11 of the U.S. Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. In re Sunbeam Corp., No. 01-040291 (AJG)

(Bankr. S.D.N.Y.). Eliskim was not a debtor in the bankruptcy, although it was an inactive corporation at the time of the bankruptcy filing. On March 18, 2004, the United States entered into a "Stipulation and Order Concerning the United States' Proof of Claim" ("Stipulation and Order") in the bankruptcy proceedings with Sunbeam's corporate successor, American Household, Inc. ("American Household"), pursuant to which American Household agreed not to object to the allowance of EPA's general unsecured claim for \$130,152 in oversight costs for the Site. The Stipulation and Order further preserved, inter alia, any claims that the United States had against Eliskim, and any potential claims against American Household arising after the date of the Stipulation and Order. On April 15, 2004, the bankruptcy court entered the Stipulation and Order, and allowed the United States' claim against American Household with respect to the Site.

F. Pursuant to the Stipulation and Order in the bankruptcy, EPA's general unsecured claim for oversight costs at the Site has not yet been paid, but as a general unsecured creditor, EPA anticipates receiving only pennies on the dollar. EPA therefore, alleges that it is owed at least \$118,000 in remaining oversight costs, plus penalties and interest.

G. At the time of the filing of the Complaint in this matter, Eliskim remains an inactive corporation. Eliskim's settlement with the United States may be funded by the possible recovery of insurance proceeds by Eliskim and/or its parent corporation, American Household. To the extent provided by this Consent Decree, certain specified benefits of the Decree also extend to American Household.

H. With respect to the City of Geneva, EPA has determined the following:

- a. The City is a former "owner," as defined in Section 101(20), 42 U.S.C.

§ 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), of a “facility,” as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and is a “potentially responsible party” within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1);

b. Prompt settlement with the City is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1);

c. The payment to be made by the City under this Consent Decree – \$12,500 – involves only a minor portion of the response costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1), based upon EPA's estimate that the total response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund and by other persons is over \$ 9 million; and

d. Based upon information currently known to EPA, EPA has determined that the City qualifies for a de minimis settlement as set forth herein pursuant to Section 122(g)(1)(B) of CERCLA, 42 U.S.C. § 9622(g)(1)(B).

I. EPA does not presently believe that it will incur additional response costs at the Site, although new information could alter that belief.

J. The United States, the Settling Defendants, and American Household agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated in good faith, that settlement of this matter will avoid prolonged and complicated litigation, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED,  
ADJUDGED, AND DECREED:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9606, 9607, and 9613(b) and also has personal jurisdiction over Settling Defendants and American Household. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants and American Household waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants and American Household consent to and shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

2. This Consent Decree is binding upon the United States, Settling Defendants, American Household and their successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants and American Household under this Consent Decree.

## **IV. DEFINITIONS**

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

- a. "American Household" shall mean American Household, Inc.

b. "AOC" or "Administrative Order by Consent" shall mean the Administrative Order by Consent, as amended, in In the Matter of: True Temper Sports Sports Site, 185 Water Street, Geneva, Ohio, before the United States Environmental Protection Agency, Region 5, Docket No. V-W-97-C-383. The AOC is Appendix "A" hereto.

c. "AOC Costs and Fees" shall mean any costs and attorneys' fees that the United States could have been awarded in a civil action to enforce the AOC against the Settling Defendants.

d. "AOC Penalties" shall mean any stipulated penalties, civil penalties, or punitive damages that the United States or EPA could have been awarded in a civil action to enforce the AOC against the Settling Defendants.

e. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.

f. "City of Geneva" or "City" shall mean the City of Geneva, Ohio.

g. "Consent Decree" or "Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

h. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

i. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

j. "Eliskim" shall mean Eliskim, Inc., including in its capacity as a successor



to the True Temper Corporation.

k. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

l. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

m. "Facility" shall have the same meaning as "Site."

n. "FDCPA" shall mean the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001, et seq.

o. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

p. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

q. "Parties" shall mean the United States, Settling Defendants, and American Household.

r. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA has paid at or in connection with the Site through the date of lodging of this Consent Decree, plus accrued Interest on all such costs. Past response costs include, without limitation, oversight costs incurred by EPA or DOJ pursuant to the AOC, plus accrued Interest on all such costs.

- s. "Plaintiff" shall mean the United States
- t. "Response costs" shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).
- u. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.
- v. "Settling Defendants" shall mean Eliskim and the City of Geneva.
- w. "Site" shall mean the True Temper Sports Superfund site, encompassing approximately thirty-seven acres, located at 185 Water Street in the City of Geneva, County of Ashtabula, Ohio, and is generally shown on the map included in Appendix "B" hereto.
- x. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

**V. STATEMENT OF PURPOSE AND CERTIFICATION OF THE CITY**

4. Purpose of Settlement with Eliskim and American Household. By entering into this Consent Decree, the mutual objectives of the United States, Eliskim, and American Household are as follows:
- a. to resolve Eliskim's liability for the Past Response Costs, AOC Costs and Fees, and AOC penalties, as provided herein;
  - b. to provide contribution protection for the matters addressed by this settlement with Eliskim pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), in accordance with Section XII herein; and
  - c. to extend certain specified benefits of the Consent Decree to Eliskim's parent corporation, American Household, to the extent provided by this Decree, in consideration

of American Household's role in facilitating funding for Eliskim's settlement with the United States.

5. Purpose of Settlement with the City. By entering into a de minimis settlement, the mutual objectives of the United States and the City of Geneva are as follows:

a. to reach a final settlement between them with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), that allows the City to provide valuable consideration to the United States to resolve the City's alleged civil liability under Sections 106, 107, and 122(h)(3) of CERCLA, 42 U.S.C. §§ 9606 and 9607, and 9622(h)(3) for injunctive relief with regard to the Site and for response costs incurred and to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site;

b. to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating a potentially responsible party from further involvement at the Site;

c. to obtain settlement with the City of Geneva for the City's fair share of response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, and by other persons; and

d. to provide for full and complete contribution protection to the City with regard to the Site pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5), in accordance with Section XII herein.

6. Certification of the City. By signing this Consent Decree, the City certifies that, to the best of its knowledge and belief, it:

a. has conducted a thorough, comprehensive, good faith search for

documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, that relates in any way to the ownership, operation, or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;

b. has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site; and

c. has and will comply fully with any and all EPA requests for information regarding the Site pursuant to Sections 104(e), 122(e)(3)(B), and 122(g)(8) of CERCLA, 42 U.S.C. §§ 9604(e), 9622(e)(3)(B), and 9622(g)(8).

#### **VI. SETTLING DEFENDANTS' PAYMENT OF RESPONSE COSTS**

7. Within 30 days of entry of this Consent Decree, Eliskim shall pay to EPA \$56,500, plus an additional sum for Interest on that amount calculated from the date of lodging of this Consent Decree through the date of payment.

8. Within 5 business days after the City receives notice from the United States that this Consent Decree has been lodged, the City shall deposit \$12,500 into an escrow account bearing interest on commercially reasonable terms, in a federally-chartered bank (the "Escrow Account"). If the Consent Decree is not entered by the Court, and the time for any appeal of that decision has run or if the Court's denial of entry is upheld on appeal, the monies placed in escrow, together with accrued interest thereon, shall be returned to the City. If the Consent Decree is entered by the Court, the City shall, within 15 days thereof, cause the monies in the

Escrow Account to be paid to EPA in accordance with Paragraphs 9 and 10 below.

9. Payment by Settling Defendants shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with EFT instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District of Ohio following lodging of the Consent Decree.

10. At the time of payment, Settling Defendants shall also send notice that payment has been made to EPA and DOJ in accordance with Section XV (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill Identification Number 05295T004B - A0, DOJ case number 90-11-2-1310/1, and the civil action number.

11. The total amount to be paid by the Settling Defendants pursuant to this Section shall be deposited in the EPA Hazardous Substance Superfund.

12. Within 15 calendar days after receipt of the amounts payable under Section VI (Payment of Response Costs) by Eliskim and the City of Geneva, the United States shall file a statement in In re Sunbeam Corp., No. 0140291 (AJG) (Bankr. S.D.N.Y.), reducing the amount of its allowed claim against Sunbeam Corporation (now known as American Household Inc.) by the amounts received from Eliskim and the City of Geneva.

## **VII. FAILURE TO COMPLY WITH CONSENT DECREE**

13. Interest on Late Payments. If any Settling Defendant fails to make any payment under Section VI (Payment of Response Costs) by the required due date, Interest shall continue to accrue on the unpaid balance owed by such Settling Defendant through the date such balance is paid. The Settling Defendant that failed to make a payment shall pay any interest accrued under this Paragraph.

14. Stipulated Penalty.

a. If any amounts due under Section VI (Payment of Response Costs) are not paid by the required date, the Settling Defendant liable for payment of such amount shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty \$ 100.00 per violation per day that such payment is late; provided, however, that if a Settling Defendant has not received the wire instructions required by Paragraph 9 within 30 days of entry of this Consent Decree, then such Settling Defendant shall not be responsible for payment of stipulated penalties unless it fails to pay the amount due under Section VI (Payment of Response Costs) within 30 days of receipt of such wire instructions plus an additional sum for Interest on that amount calculated from the date of lodging of this Consent Decree through the date of payment.

Payment of stipulated penalties shall be in addition to the Interest required by Paragraph 13.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party(ies) making payment, the Site name, the EPA Region and Site Spill ID Number 05295T004B - A0, DOJ Case Number 90-11-2-1310/1, and the civil action number. Settling Defendants shall send the check (and any accompanying letter) to:

EPA Superfund  
Environmental Protection Agency, Region 5  
Attention: Program Accounting and Analysis  
P.O. Box 70753  
Chicago, Illinois 60673

c. At the time of each payment, Settling Defendants shall also send notice that payment has been made to EPA and DOJ in accordance with Section XV (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID Number 05295T004B - A0, DOJ Case Number 90-11-2-1310/1, and the civil action number.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

15. If the United States brings an action to enforce this Consent Decree, Settling Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

16. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

17. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section VI or from performance of any other requirements of this Consent Decree.

#### **VIII. COVENANTS NOT TO SUE BY PLAINTIFF**

18. Covenant Not to Sue Eliskim and American Household by United States. Except

as specifically provided in Paragraph 21 (Reservation of Rights), the United States covenants not to sue or to take administrative action against Eliskim to recover Past Response Costs, AOC Costs and Fees, and AOC Penalties pursuant to Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3), or the FDCPA. This covenant not to sue shall take effect upon receipt by EPA of all payments required to be made by Eliskim pursuant to Section VI (Payment of Response Costs) and any amount due from Eliskim under Section VII (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Eliskim of their obligations under this Consent Decree. This covenant not to sue extends only to Eliskim and does not extend to any other person; provided, however, that upon receipt by EPA of all payments required to be made by Eliskim pursuant to Section VI (Payment of Response Costs) and any amount due from Eliskim under Section VII (Failure to Comply with Consent Decree), the covenant not to sue under the FDCPA (and the reservations thereto under Paragraph 21 (Reservation of Rights)) shall also extend to American Household.

19. Covenant Not to Sue the City of Geneva by the United States. In consideration of the valuable consideration that will be provided by the City of Geneva under the terms of this Consent Decree, and except as specifically provided in Paragraph 22 (Reservations of Rights Against the City of Geneva by United States), the United States covenants not to sue or take administrative action against the City relating to the Site pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3), or the FDCPA. This covenant not to sue shall take effect upon receipt by EPA of all payments required to be made by the City pursuant to Section VI (Payment of



Response Costs) and any amount due from the City under Section VII (Failure to Comply with Consent Decree). This covenant is conditioned upon the satisfactory performance by the City of all obligations under this Consent Decree and the veracity of the information provided to EPA by City relating to the City's involvement with the Site. This covenant not to sue extends only to the City and does not extend to any other person.

#### **IX. TERMINATION OF THE AOC**

20. Upon receipt by EPA of all payments from the Settling Defendants required by Section VI (Payment of Response Costs), and any amount due under Section VII (Failure to Comply with Consent Decree), the remaining obligations under the AOC shall be deemed fully satisfied, and the AOC shall terminate.

#### **X. RESERVATIONS OF RIGHTS BY UNITED STATES**

21. Reservation of Rights Against Eliskim and American Household by the United States. The United States reserves, and this Consent Decree is without prejudice to, all rights against Eliskim and American Household with respect to all matters not expressly included within the Covenant Not to Sue extended to each of those entities in Paragraph 18. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Eliskim and American Household with respect to:

- a. liability for failure of Eliskim to meet a requirement of this Consent Decree;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under

Section 106 of CERCLA, 42 U.S.C. § 9606, except as to enforcement of the AOC after it is terminated pursuant to Paragraph 18;

- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

22. Reservation of Rights Against the City of Geneva by the United States. The United States reserves, and this Consent Decree is without prejudice to, all rights against the City with respect to all matters not expressly included within the Covenant Not to Sue by the United States in Paragraph 19. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against the City with respect to:

- a. claims based on a failure by the City to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; or
- d. liability arising from any future ownership or operation of the Site or any facility at the Site or liability for any future arrangement for disposal or treatment of a hazardous substance, pollutant or contaminant at the Site after the effective date of this Consent Decree.

23. Nothing in this Consent Decree constitutes a covenant not to sue the City of Geneva or to take action or otherwise limits the ability of the United States, including EPA, to seek or obtain further relief from the City, and the covenant not to sue in Paragraph 19 of this Consent Decree is null and void, if information not currently known to EPA is discovered that

indicates that the City fails to meet any of the criteria specified in Section 122(g)(1)(B) of CERCLA.

**XI. COVENANT NOT TO SUE BY SETTling DEFENDANTS AND  
AMERICAN HOUSEHOLD**

24. Covenant Not to Sue by Eliskim and American Household. Eliskim and American Household covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs, AOC Costs and Fees, AOC Penalties, or this Consent Decree, including but not limited to:
- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
  - b. any claim arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of Ohio, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or
  - c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs, AOC Costs and Fees, or AOC Penalties.

25. Eliskim and American Household agree not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Defendants or American Household with respect to the Site is based solely on having arranged for disposal or treatment,

or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

26. The waiver by Eliskim and American Household in Paragraph 25 shall not apply with respect to any defense, claim, or cause of action that Eliskim or American Household may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against Eliskim or American Household. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act or "RCRA"), 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at

the Site.

27. Eliskim and American Household agree not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against the City. This waiver shall not apply with respect to any defense, claim, or cause of action that Eliskim or American Household may have against the City if the City asserts a claim or cause of action relating to the Site against Eliskim or American Household.

28. Nothing in this Consent Decree shall affect the discharge which American Household received under paragraph 7 of the Order of November 27, 2002 of the U.S. Bankruptcy Court for the Southern District of New York confirming the Plan of Reorganization in In re Sunbeam Corp., No. 01-40291 (AJG) (Bankr. S.D.N.Y.) (hereinafter "Order") or shall prevent American Household from enforcing the injunction in paragraph 7 of the Order against any party.

29. Covenant Not to Sue by the City of Geneva. The City covenants not to sue and agrees not to assert any claims or causes of action against the United States or its contractors or employees with respect to the Site or this Consent Decree including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Constitution of the State of Ohio, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site. Except as provided in Paragraph 30 (Waiver of Claims) and Paragraph 36 (Waiver of Claim-Splitting Defenses), these covenants not to sue by the City of Geneva shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 22(b), (c), or (d) or Paragraph 23, but only to the extent that the City's claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

30. The City of Geneva agrees not to assert any claims or causes of action (including claims for contribution under CERCLA) that it may have for all matters relating to the Site against any other person who is a potentially responsible party under CERCLA at the Site, including without limitation, Eliskim and American Household. This waiver shall not apply with respect to any defense, claim, or cause of action that the City may have against any other person if such person asserts a claim or cause of action relating to the Site against the City.

31. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

## **XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

32. Except as provided in Paragraphs 24-31 (Waiver of Claims), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraph 24-31 (Waiver of Claims), the United States, the Settling Defendants, and American Household each reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands,

and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Notwithstanding any other provision of this Consent Decree, nothing in this Consent Decree shall be construed or interpreted to deny or prejudice any rights, claims, or causes of action that American Household, Eliskim, or the City may have against any insurance company with respect to the Site.

33. The Parties agree, and by entering this Consent Decree this Court finds, that Eliskim is entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for “matters addressed” as to Eliskim in this Consent Decree. As to Eliskim, those “matters addressed” are Past Response Costs, AOC Costs and Fees, and AOC Penalties.

34. The Parties agree, and by entering this Consent Decree this Court finds, that the City of Geneva is entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5), for “matters addressed” as to the City in this Consent Decree. As to the City, those “matters addressed” are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person.

35. Each Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days

of service of the complaint or claim upon it. In addition, each Settling Defendant shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

36. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants and American Household shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff.

### **XIII. ACCESS TO INFORMATION**

37. Settling Defendants and American Household shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within their possession or control or that of their contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site. Settling Defendants and American Household may produce the records in an electronic format (for example as images on a compact disc), provided that Settling Defendants and American Household (1) produce in paper form, an index listing the electronic documents and (2) the hardware and software necessary to access, view, and print the electronic documents,



either as an entire collection or by choosing specific documents from the index, are available to EPA or are provided by Settling Defendants and American Household upon EPA's request.

38. Confidential Business Information and Privileged Documents.

a. Settling Defendants and American Household may assert business confidentiality claims covering part or all of the records submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Defendants or American Household that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such records without further notice to Settling Defendants or American Household.

b. Settling Defendants and American Household may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants or American Household assert such a privilege in lieu of providing records, they shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants and American Household shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the

privilege claim and any such dispute has been resolved in the Settling Defendants' or American Household's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

c. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

#### **XIV. RETENTION OF RECORDS**

39. Until 5 years after the entry of this Consent Decree, the Settling Defendants and American Household shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Settling Defendants and American Household may preserve and retain their records in an electronic format (for example as images on a compact disc), provided that Settling Defendants and American Household also retain, for the same period of time, (1) in paper form, an index listing the electronic documents and (2) hardware and software necessary to access, view, and print the electronic documents, either as an entire collection or by choosing specific documents from the index.

40. After the conclusion of the 5-year document retention period in the preceding paragraph, Settling Defendants and American Household shall notify EPA and DOJ at least 90 days prior to the destruction of any such records, and, upon request by EPA or DOJ, Settling

Defendants and American Household shall deliver any such records to EPA. Settling Defendants and American Household may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants and American Household assert such a privilege, they shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants and American Household shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' or American Household's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

41. Each Settling Defendant and American Household hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6972.

## **XV. NOTICES AND SUBMISSIONS**

42. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, the Settling Defendants, and American Household respectively.

### **As to the United States and DOJ:**

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice (DJ # 90-11-2-1310/1)  
P.O. Box 7611  
Washington, D.C. 20044-7611

### **As to EPA:**

Steven P. Kaiser  
Associate Regional Counsel  
U.S. Environmental Protection Agency  
77 W. Jackson Boulevard - C -14J  
Chicago, Illinois 60604-3590

Jon Peterson  
On Scene Coordinator  
U.S. Environmental Protection Agency  
77 W. Jackson Boulevard - SR-6J  
Chicago, Illinois 60604-3590

Anthony Audia, Chief  
Program Accounting & Analysis Section  
U.S. Environmental Protection Agency  
77 W. Jackson Boulevard - MF-10J  
Chicago, Illinois 60604-3590

As to Eliskim:

Marc Clements  
Vice President  
Eliskim, Inc.  
2381 Executive Center Drive  
Boca Raton, FL 33431

cc: David B. Hird, Esq.  
Weil, Gotshal, Manges, LLP  
1501 K Street, NW, Suite 100  
Washington, DC 20005

As to the City of Geneva:

James Pearson  
City Manager  
City of Geneva  
44 N. Forest Street  
Geneva, Ohio 44041

As to American Household:

Lorelei J. Borland  
Vice President  
Environmental and Regulatory Affairs  
American Household, Inc.  
2381 Executive Center Drive  
Boca Raton, FL 33431

cc: David B. Hird, Esq.  
Weil, Gotshal, Manges, LLP  
1501 K Street, NW, Suite 100  
Washington, DC 20005

**XVI. RETENTION OF JURISDICTION**

43. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

**XVII. INTEGRATION/APPENDICES**

44. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Defendants with respect to the settlement

embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree: "Appendix A" is the AOC; and "Appendix B" is the map of the Site.

#### **XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

45. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants and American Household consent to the entry of this Consent Decree without further notice, and the United States reserves the right to oppose a motion to intervene in this action brought by any person.

46. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

#### **XIX. SIGNATORIES/SERVICE**

47. Each undersigned representative of a Settling Defendant to this Consent Decree, American Household, and the undersigned delegate of the Attorney General of the United States certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

48. The Settling Defendants and American Household hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree,

unless the United States has notified Settling Defendants and American Household in writing that it no longer supports entry of the Consent Decree.

49. Each Settling Defendant and American Household shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants and American Household hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

50. The Parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

#### **XX. FINAL JUDGMENT**

51. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States, and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2005.

\_\_\_\_\_  
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Eliskim (N.D. Ohio), relating to the True Temper Sports Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: \_\_\_\_\_

\_\_\_\_\_  
W. BENJAMIN FISHEROW  
Deputy Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
P.O. Box 7611  
U.S. Department of Justice  
Washington, D.C. 20044-7611

\_\_\_\_\_  
JUSTIN A. SAVAGE  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611

GREGORY A. WHITE  
United States Attorney

\_\_\_\_\_  
STEVEN PAFFILAS  
Assistant United States Attorney  
Northern District of Ohio  
801 West Superior Avenue, Suite 400  
Cleveland, Ohio 44113-1852



THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Eliskim (N.D. Ohio), relating to the True Temper Sports Superfund Site.

FOR THE UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY

Date: \_\_\_\_\_

\_\_\_\_\_  
Richard Karl  
Director, Superfund Division, Region 5  
U.S. Environmental Protection Agency  
77 W. Jackson Blvd.  
Chicago, IL 60604

\_\_\_\_\_  
Steven P. Kaiser  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
77 W. Jackson Blvd.  
Chicago, IL 60604

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Eliskim (N.D. Ohio), relating to the True Temper Sports Superfund Site.

FOR DEFENDANT ELISKIM, INC.

Date: \_\_\_\_\_

Typed Name: Marc Clements

Title: Vice President, Eliskim, Inc.

Address:

2381 Executive Center Drive

Boca Raton, FL 33431

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Typed Name: David B. Hird, Esq.

Title: Weil, Gotshal & Manges, LLP

Address: 1501 K Street, NW, Suite 100

Washington, DC 20005

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Eliskim (N.D. Ohio), relating to the True Temper Sports Superfund Site.

FOR DEFENDANT CITY OF GENEVA, OHIO

Date: \_\_\_\_\_

Typed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Typed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

THE UNDERSIGNED PARTY hereby assents to the covenants set forth in Section XI (Covenants Not to Sue by settling Defendants and American Household) of this Consent Decree United States v. Eliskim (N.D. Ohio), relating to the True Temper Sports Superfund Site.

FOR AMERICAN HOUSEHOLD, INC.

Date: \_\_\_\_\_

Typed Name: Lorelei J. Borland

Title: Vice President, Environmental and

Regulatory Affairs

Address: American Household, Inc.

2381 Executive Center Drive

Boca Raton, FL 33431

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Typed Name: David B. Hird, Esq.

Title: Weil, Gotshal & Manges, LLP

Address: 1501 K Street, NW, Suite 100

Washington, DC 20005

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

V-W- '97-C-383

IN THE MATTER OF:	)	Docket No.
	)	
True Temper Sports Site	)	ADMINISTRATIVE ORDER BY
185 Water Street	)	CONSENT PURSUANT TO
Geneva, Ohio	)	SECTION 106 OF THE
	)	COMPREHENSIVE
	)	ENVIRONMENTAL RESPONSE,
Respondents:	)	COMPENSATION, AND
	)	LIABILITY ACT OF 1980,
	)	as amended, 42 U.S.C.
	)	§ 9606(a)
	)	
	)	
Eliskim, Inc.,	)	
formerly known as True Temper	)	
Corporation,	)	
	)	
City of Geneva, Ohio	)	

I. JURISDICTION AND GENERAL PROVISIONS

This Order is entered voluntarily by the United States Environmental Protection Agency ("EPA") and the Respondents. The Order is issued pursuant to the authority vested in the President of the United States by Sections 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606(a), 9607 and 9622. This authority has been delegated to the Administrator of the EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A, 14-14-C and 14-14-D.

This Order provides for performance of removal actions and reimbursement of response costs incurred by the United States in connection with property located at the 37 acre parcel at 185 Water Street (the "True Temper Sports Site" or the "Site"). This Order requires the Respondents to conduct removal actions described

herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

A copy of this Order will also be provided to the State of Ohio, which has been notified of the issuance of this Order pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

Respondents' participation in this Order shall not constitute an admission of liability or of EPA's findings or determinations contained in this Order except in a proceeding to enforce the terms of this Order. Respondents agree to comply with and be bound by the terms of this Order. Respondents further agree that they will not contest the basis or validity of this Order or its terms.

## **II. PARTIES BOUND**

This Order applies to and is binding upon EPA, and upon Respondents and Respondents' heirs, receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondents including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondents' responsibilities under this Order. Respondents are jointly and severally liable for carrying out all activities required by this Order. Compliance or noncompliance by one or more Respondents with any provision of this Order shall not excuse or justify noncompliance by any other Respondent.

Respondents shall ensure that their contractors, subcontractors, and representatives comply with this Order. Respondents shall be responsible for any noncompliance with this Order.

## **III. FINDINGS OF FACT**

Based on available information, including the Administrative Record in this matter, EPA hereby finds that:

1. The True Temper Sports Site ("Site") is located in Ashtabula County at 185 Water Street, Geneva, Ohio. The Site encompasses approximately 37 acres, and is bordered by Cowles

Creek to the west, Austin Road to the east, and railroad tracks to the south. The Site is split by North Avenue which runs east-west. The majority of the Site lies south of North Avenue (south side), with a small portion to the north adjacent to Austin Road (north side), as shown in Attachment A.

2. Advanced Technology Corporation ("ATC") owns property bounded approximately on the east by Austin Road, the south by the NYC Railroad tracks, the west by the access road and the north by parcel G (see Attachment B) and North Avenue. ATC is a manufacturer of auto parts. The ATC property constitutes a portion of the True Temper Site.
3. Eliskim, Inc., formerly known as True Temper Corporation is the present and past owner, respectively, of parcel G (see Attachment B). This parcel is bounded on the east by Austin Road, on the north by the North Ditch, on the west by the Geneva City Dump and on the south by parcel M (see Attachment B) which belongs to ATC. The Eliskim property constitutes the remainder of the True Temper Site.
4. The City of Geneva currently owns the access road and a portion of the copper cyanide lagoon area. This parcel is shown as parcel J on Attachment B.
5. The True Temper Site was formerly used as a manufacturing and plating facility for golf club shafts, tennis racket frames, and radio antennas for 30 years. The wastes generated were mainly metal-bearing sludges from the plating operations. The facility utilized three chromium/nickel wastewater lagoons; an unlined copper/cyanide lagoon; an unlined zinc/phosphate sludge lagoon; an unlined rinse water settling pond; a concrete basin; and a company dump. The lagoon areas are fenced, however, the fencing is non-continuous providing limited access control.
6. The True Temper Sports Site lies approximately 1/4 mile north of the City of Geneva. The area directly around the Site is residential and lightly populated. The City of Geneva Waste Water Treatment Plant, and the City Streets Department lie adjacent to the Site, north of North Avenue. The City of Geneva Landfill is located just north of the Site.

7. The concrete settling pond, zinc/phosphate sludge lagoon and chromium/nickel wastewater lagoon are located east of the Streets Department and north of North Avenue. The unlined metal finishing rinse water settling pond, two chromium/nickel wastewater lagoons and copper/cyanide lagoon are located south of North Avenue on the east end of the True Temper facility. There are also various buildings located south of North Avenue on the west end of the former True Temper property. Only the two settling ponds still contain wastewaters.
8. The 37 acre parcel of property which constitutes the True Temper Site has been split up and sold separately. Currently, many of the buildings are occupied by various industrial businesses.
9. Three monitoring wells were installed by the former True Temper Company around the two chromium/nickel lagoons located south of North Avenue and were sampled quarterly from approximately 1981-1985. Sample analysis included eight standard water quality parameters, and total chromium. The sample results over this time period showed no immediate environmental hazard.
10. In August 1984, the surface water in Cowles Creek was sampled by the Ohio Environmental Protection Agency (OEPA) as part of a preliminary assessment (PA) of the Site. VOC and pesticide analyses indicated low levels of pesticides were present in samples adjacent and downstream of the Site.
11. In 1985 EPA performed a Site Investigation (SI) during which groundwater from the three south side monitoring wells and two soil samples were collected. Inorganic analyses were performed on the samples in both matrices. There was no significant contamination in the well samples. The soil samples were collected in the ditch that runs along Austin road on the south side and were moderately high in lead, chromium, and nickel. EPA noted ponding on the old lagoons and water running off into the drainage ditch. Based on the results of the PA and SI, EPA completed a Hazard Ranking Score (HRS) package for the Site and determined that no further action was required at that time.
12. In May 1991, OEPA collected samples from on-site soils, ditch



sediment, surface water from Cowles Creek and sediment from a True Temper lagoon. PCBs were detected in soil and sediment samples at concentrations as high as 1,000 ppm, potentially posing a threat to trespassers, workers in the area and groundwater. Additionally, volatile organic compounds and metals were detected in all media sampled, which could also pose a threat to trespassers, workers and groundwater. In September 1991, samples were taken from three residential wells for pesticides and PCBs; no contamination was detected.

13. During the 1991 OEPA investigation of the Geneva City Dump, several soil and sediment samples were collected in areas on the Eliskim property, north of North Avenue. The full organic and inorganic analyses revealed high levels of PCB's, metals, and VOC's.
14. In 1993, an Expanded Site Inspection (ESI) was conducted by OEPA on the Geneva City Dump, and soil, sediment, and surface water samples were collected from the three lagoons on the True Temper facility, Cowles Creek, the pump station, True Temper Ditch, and the settling basin. The analysis detected aroclor 1254 (PCB) as high as 320 ppm; copper at 68,900 ppm; Lead at 1,490 ppm; chromium at 1,560 ppm; cyanide at 798 ppm; and high levels of various semi-volatile organic compounds including benzo(a)pyrene at 8,400 ppb. All surface water samples collected downstream of True Temper contained cyanide concentrations greater than three times the levels in the upstream sample. Additionally, elevated concentrations of aluminum, chromium, copper and zinc were present in Cowles Creek. These contaminants pose a potential threat to trespassers, workers, groundwater, surface water, fish and fishermen and their families.
15. The Geneva State Park is located approximately four miles downstream of the Site, is a popular recreational and sportfishing area. Ohio Water Quality Standards have designated the Cowles Creek estuary as a seasonal salmonid aquatic life habitat. Additionally, the creek is a primary contact recreational stream with an agricultural and industrial water supply use designated exceptional warmwater habitat. The contamination found on the True Temper facility poses a potential threat to the public who utilize the Geneva State Park for fishing and swimming.

16. A wooded area of approximately 30 acres is located just north of the site. This wooded area is potentially a forested floodplain wetland. There are three ditches (East, North, and True Temper) which drain the Site and enter Cowles Creek. The east ditch and the True Temper ditch drain potentially contaminated water near the wetland which may pose a threat to the wetland and the wildlife that frequent it. The following federally endangered/threatened species are known to occur in Ashtabula County and may be at risk from contamination from the True Temper facility: Bald Eagle and Clubshell Mussel.
17. In December 1995, U.S. EPA conducted an engineering evaluation/cost analysis of the site, which analyzed removal alternatives.

#### IV. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record supporting these removal actions, EPA has determined that:

1. The True Temper Sports Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
2. Lead, PCBs, cyanide, VOCs, BNAs, and chlorinated pesticides are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
3. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
4. Respondents Eliskim and the City of Geneva are present "owners" and/or "operators" of the True Temper Sports Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20). Each Respondent therefore may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
5. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22).

6. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended ("NCP"), 40 CFR § 300.415(b)(2). These factors include, but are not limited to, the following:

- a. actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants; this factor is present at the Site due to the existence of high levels of lead and polychlorinated biphenyls (PCBs) in near-surface soils.
- b. actual or potential contamination of drinking water supplies or sensitive ecosystems; this factor is present at the Site due to the existence of Arochlor 1254 and metals (cadmium, copper, lead, and zinc) above ecological concern levels in surface soil and sediment samples collected in the vicinity of the former waste oil disposal area and the zinc/phosphate sludge lagoon;
- c. hazardous substances or pollutants or contaminants in tanks, or other bulk storage containers, that may pose a threat of release; this factor is present due to the presence of the concrete basin which is filled with waste;
- d. high levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate; this factor is present at the Site due to the existence of high levels of lead in surface soils;
- e. the unavailability of other appropriate federal or state response mechanisms to respond to the release; this factor supports the actions required by this Order at the Site because there are no other appropriate federal or state response mechanisms available; and
- f. other situations or factors that may pose threats to public health or welfare or the environment; this factor is present at the Site due to the existence of both lead and PCBs in groundwater.

7. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

8. The removal actions required by this Order, if properly performed under the terms of this Order, are consistent with the NCP. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment.

#### V. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, it is hereby ordered and agreed that Respondents shall comply with the following provisions, including but not limited to all documents attached to or incorporated into this Order, and perform the following actions:

1. Designation of Contractor, Project Coordinator, and On-Scene Coordinator

Respondents shall perform the removal actions required by this Order themselves or retain contractors to implement the removal actions. Respondents shall notify EPA of Respondents' qualifications or the name and qualifications of such contractors, whichever is applicable, within 15 calendar days of the effective date of this Order. Respondents shall also notify EPA of the name and qualifications of any other contractors or subcontractors retained to perform work under this Order at least 5 business days prior to commencement of such work. EPA retains the right to disapprove of the Respondents or any of the contractors and/or subcontractors retained by the Respondents. If EPA disapproves a selected contractor, Respondents shall retain a different contractor within 30 calendar days following EPA's disapproval and shall notify EPA of that contractor's name and qualifications within 30 calendar days of EPA's disapproval.

Within 10 calendar days after the effective date of this Order, the Respondents shall designate a Project Coordinator who shall be responsible for administration of all the Respondents' actions required by the Order. Respondents shall submit the designated coordinator's name, address, telephone number, and qualifications

to EPA. To the greatest extent possible, the Project Coordinator shall be present on-site or readily available during site work. EPA retains the right to disapprove of any Project Coordinator named by the Respondents. If EPA disapproves a selected Project Coordinator, Respondents shall retain a different Project Coordinator within 7 calendar days following EPA's disapproval and shall notify EPA of that person's name and qualifications within 7 calendar days of EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by all Respondents.

The EPA has designated Jon Peterson of the Remedial Response Branch, Region 5, as its On Scene Coordinator (OSC). Respondents shall direct all submissions required by this Order to the OSC at USEPA, SR-6J, 77 West Jackson, Chicago, Illinois 60604, by certified or express mail. Respondents shall also send a copy of all submissions to Gaylene Vasaturo, Assistant Regional Counsel, 77 West Jackson Boulevard, C-29A, Chicago, Illinois, 60604-3590. All Respondents are encouraged to make their submissions to EPA on recycled paper (which includes significant postconsumer waste paper content where possible) and using two-sided copies.

EPA and Respondents shall have the right, subject to the immediately preceding paragraph, to change their designated OSC or Project Coordinator. EPA shall notify the Respondents, and Respondents shall notify EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. The initial notification may be made orally but it shall be promptly followed by a written notice.

## 2. Work to Be Performed

Respondents shall perform, at a minimum, the following removal actions:

- a. **Chromium/Nickel Sludge Waste** - Excavate and dispose of sludge and visually contaminated soil in the chromium/nickel sludge lagoon area south of North Avenue. Material found to be TCLP-hazardous with respect to chromium could be disposed of in a RCRA landfill or solidified/stabilized and confirmed by TCLP testing to be noncharacteristic and disposed of in a nonhazardous waste landfill. Material found to be nonhazardous by TCLP testing could be disposed of as a solid

waste at a nonhazardous waste landfill. The excavated area would then be backfilled and seeded.

- b. **Concrete Basin and Pump Station** - Remove oil/water sludge mixtures from the structures; demolish and dispose of the concrete structures, and install new drainage pipe. The waste oil materials would be transported to an off-site oil disposal/recycling facility.
- c. **PCB-Contaminated Soil** - Excavate and dispose of soils contaminated with PCBs over 1 mg/kg at either a TSCA landfill if PCB concentrations are over 50 mg/kg or a nonhazardous waste landfill if PCB concentrations are less than 50 mg/kg.
- d. **Lead-Contaminated Soil** - Excavate and dispose of all soils containing lead above the 1,387 mg/kg cleanup level. This lead contaminated soil is present on the access road which leads into the True Temper facility. Also, excavate and dispose of waste and visually contaminated soil in the copper/cyanide lagoon area.

The Work to be performed shall be performed in accordance with the Statement of Work (SOW) which is attached as Attachment C and incorporated by reference into this AOC.

## 2.1 Work Plan and Implementation

Within 60 calendar days after the effective date of this Order, the Respondents shall submit to EPA for approval a draft Work Plan for performing the removal activities set forth above. The draft Work Plan shall provide a description of the types of pre-removal activities that will be conducted prior to solicitation of a removal subcontractor, an expeditious schedule for these activities, and a Health & Safety plan for any field sampling to be conducted.

EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If EPA requires revisions, Respondents shall submit a revised draft Work Plan within 20 calendar days of receipt of EPA's notification of required revisions. Respondents shall implement the Work Plan as finally approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any

subsequent modifications shall be fully enforceable under this Order. Respondents shall notify EPA at least 48 hours prior to performing any on-site work pursuant to the EPA approved work plan. Respondents shall not commence or undertake any removal actions at the Site until Respondent has submitted an Addendum to the Work Plan as set out in the SOW and received EPA approval of the Addendum.

## 2.2 Addendum to Work Plan and Health and Safety Plan

Respondents must submit an Addendum to the Work Plan, as set out in the SOW, 45 calendar days after completion of pre-removal field sampling. The draft Addendum shall provide a description of, and expeditious schedule for the removal actions required by this Order. The Addendum to the Work Plan shall include a Health and Safety Plan. The Respondents shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Order. This plan shall comply with applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 CFR Part 1910. If EPA determines it is appropriate, the plan shall also include contingency planning. Respondents shall incorporate all changes to the plan recommended by EPA, and implement the plan during the pendency of the removal action.

EPA may approve, disapprove, require revisions to, or modify the draft Addendum to the Work Plan. If EPA requires revisions, Respondents shall submit a revised draft Addendum within 20 calendar days of receipt of EPA's notification of required revisions. Respondents shall implement the Addendum to the Work Plan as finally approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Addendum to the Work Plan and any subsequent modification shall be fully enforceable under this Order.

## 2.3 Quality Assurance and Sampling

All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data

validation, and chain of custody procedures. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with EPA guidance. Upon request by EPA, Respondents shall have such a laboratory analyze samples submitted by EPA for quality assurance monitoring. Respondents shall provide to EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Respondents shall also ensure provision of analytical tracking information consistent with OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites."

Upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondents or their contractors or agents while performing work under this Order. Respondents shall notify EPA not less than 3 business days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.

#### 2.4 Post-Removal Site Control

As part of the Addendum to the Work Plan, Respondents shall submit a proposal for post-removal site control, consistent with Section 300.415(1) of the NCP, 40 CFR § 300.415(1), and OSWER Directive 9360.2-02. Upon EPA approval, Respondents shall implement such controls and shall provide EPA with documentation of all post-removal site control arrangements.

#### 2.5 Reporting

Respondents shall submit a monthly written progress report to EPA concerning actions undertaken pursuant to this Order, beginning 30 calendar days after the date of EPA's approval of the Work Plan, until termination of this Order, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.



Any Respondent that owns any portion of the Site shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice of this Order to the transferee and written notice of the proposed conveyance to EPA and the State. The notice to EPA and the State shall include the name and address of the transferee. The party conveying such an interest shall require that the transferee will provide access as described in Section V.3 (Access to Property and Information).

### 2.5 Final Construction Report

Within 60 calendar days after completion of the final inspection of all removal actions required under this Order, the Respondents shall submit for EPA review a final report summarizing the actions taken to comply with this Order. The final report shall conform to the requirements set forth in Section 300.165 of the NCP, 40 CFR § 300.165. The final report shall also include a good faith estimate of total costs incurred in complying with the Order, a listing of quantities and types of materials removed off-site or handled on-site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits).

The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

### 3. Access to Property and Information

Respondents shall provide or obtain access to the Site and off-site areas to which access is necessary to implement this Order, and shall provide access to all records and documentation related to the conditions at the Site and the actions conducted pursuant to this Order. Such access shall be provided to EPA employees,

contractors, agents, consultants, designees, representatives, and State of Ohio representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct actions which EPA determines to be necessary. Respondents shall submit to EPA, upon request, the results of all sampling or tests and all other data generated by Respondents or their contractors, or on the Respondents' behalf during implementation of this Order.

Where work under this Order is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within 14 calendar days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondents shall immediately notify EPA if, after using their best efforts, they are unable to obtain such agreements. Respondents shall describe in writing their efforts to obtain access. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. Respondents shall reimburse EPA for all costs and attorneys fees incurred by the United States in obtaining such access.

#### 4. Record Retention, Documentation, Availability of Information

Respondents shall preserve all documents and information, in their possession or the possession of their contractors, subcontractors or representatives, relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for six years following completion of the removal actions required by this Order. At the end of this six year period and at least 60 days before any document or information is destroyed, Respondents shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA. In addition, Respondents shall provide documents and information retained under this Section at any time before expiration of the six year period at the written request of EPA.

#### 5. Off-Site Shipments

All hazardous substances, pollutants or contaminants removed off-

site pursuant to this Order for treatment, storage or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, with the EPA Off-Site Rule, 40 CFR § 300.440, 58 Federal Register 49215 (Sept. 22, 1993).

6. Compliance With Other Laws

Respondents shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA Section 121(e), 42 U.S.C. § 9621(e), and 40 CFR § 300.415(i). In accordance with 40 CFR § 300.415(i), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements under federal environmental or state environmental or facility siting laws.

7. Emergency Response and Notification of Releases

If any incident, or change in Site conditions, during the activities conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondents shall immediately take all appropriate action to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the OSC or, in the event of his/her unavailability, shall notify the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, of the incident or Site conditions. If Respondents fail to respond, EPA may respond to the release or endangerment and reserve the right to recover costs associated with that response.

Respondents shall submit a written report to EPA within 7 business days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. Respondents shall also comply with any other notification requirements, including those in CERCLA Section 103, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11004.

#### VI. AUTHORITY OF THE EPA ON-SCENE COORDINATOR

The OSC shall be responsible for overseeing the implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other response action undertaken by EPA or Respondents at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

#### VII. REIMBURSEMENT OF COSTS

Respondents shall pay all past response costs and oversight costs of the United States related to the Site that are not inconsistent with the NCP. Within 30 days of the effective date of this Order Respondents shall pay \$467,053.38 for past response costs incurred and paid by U.S. EPA as of September 30, 1996, in the manner described below, for reimbursement of past response costs paid by the United States.

In addition, EPA will send Respondents a bill for "oversight costs" on an annual basis. "Oversight costs" are all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this AOC and which are not inconsistent with the NCP.

"Oversight costs" shall also include all costs, including direct and indirect costs, paid by the United States in connection with the Site between October 1, 1996 and the effective date of this AOC.

Respondents shall, within 30 calendar days of receipt of a bill, remit a cashier's or certified check for the amount of the bill made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency

Superfund Accounting  
P.O. Box 76753  
Chicago, Illinois 60673

Respondents shall simultaneously transmit a copy of the check to the Director, Superfund Division, EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590. Payments shall be designated as "Response Costs - True Temper Sports Site" and shall reference the payors' name and address, the EPA site identification number "A0", and the docket number of this Order.

In the event that any payment is not made within the deadlines described above, Respondents shall pay interest on the unpaid balance. Interest is established at the rate specified in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The interest shall begin to accrue on the date of the Respondent's receipt of the bill or for past response costs, on the effective date of this Order. Interest shall accrue at the rate specified through the date of the payment. Payments of interest made under this paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section.

Respondents may dispute all or part of a bill for Oversight costs submitted under this Order, if Respondents allege that EPA has made an accounting error, or if Respondents allege that a cost item is inconsistent with the NCP.

If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondents shall pay the full amount of the uncontested costs into the Hazardous Substance Fund as specified above on or before the due date. Within the same time period, Respondents shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondents shall simultaneously transmit a copy of both checks to the OSC. Respondents shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within 20 calendar days after the dispute is resolved.

#### VIII. DISPUTE RESOLUTION

The parties to this Order shall attempt to resolve, expeditiously and informally, any disagreements concerning this Order.

If the Respondents object to any EPA action taken pursuant to this Order, including billings for response costs, the Respondents shall notify EPA in writing of their objection within 10 calendar days of such action, unless the objection has been informally resolved. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondents' position, and all supporting documentation on which such party relies. EPA shall submit its Statement of Position, including supporting documentation, no later than 10 calendar days after receipt of the written notice of dispute. In the event that these 10-day time periods for exchange of written documents may cause a delay in the work, they shall be shortened upon, and in accordance with, notice by EPA. The time periods for exchange of written documents relating to disputes over billings for response costs may be extended at the sole discretion of EPA.

An administrative record of any dispute under this Section shall be maintained by EPA. The record shall include the written notification of such dispute, and the Statement of Position served pursuant to the preceding paragraph. Upon review of the administrative record, the Director of the Superfund Division, EPA Region 5, shall resolve the dispute consistent with the NCP and the terms of this Order.

Respondents' obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

#### IX. FORCE MAJEURE

Respondents agree to perform all requirements under this Order within the time limits established under this Order, unless the performance is delayed by a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond the control of Respondents or of any entity controlled by

Respondents, including but not limited to their contractors and subcontractors, that delays or prevents performance of any obligation under this Order despite Respondents' best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work or increased cost of performance.

Respondents shall notify EPA orally within 24 hours after Respondents become aware of any event that Respondents contend constitutes a force majeure, and in writing within 7 calendar days after the event. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Respondents shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this Section shall be grounds for EPA to deny Respondents an extension of time for performance. Respondents shall have the burden of demonstrating by a preponderance of the evidence that the event is a force majeure, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay.

If EPA determines a delay in performance of a requirement under this Order is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by EPA. Such an extension shall not alter Respondents' obligation to perform or complete other tasks required by the Order which are not directly affected by the force majeure.

#### **X. STIPULATED PENALTIES**

For each day, or portion thereof, that Respondents fail to fully perform any requirement of this Order in accordance with the schedule established pursuant to this Order (and in accordance with any modifications to the schedule pursuant to Section XVI of this AOC), Respondents shall be liable as follows:

	<u>Penalty per violation per day</u>		
	1-30	31-60	Over 60
	<u>DAYS</u>	<u>DAYS</u>	<u>DAYS</u>
Failure to submit progress	\$300	\$600	\$1200

reports

Failure to submit the following plans, documents or reports draft or final:

Removal Work Plan	\$1000	\$2000	\$4000
Health and Safety Plan	\$1000	\$2000	\$4000
Proposal for post-removal site control	\$1000	\$2000	\$4000
Final Report	\$1000	\$2000	\$4000

Failure to meet a major milestone in the approved removal schedule \$1500 \$3000 \$6000

For failure to comply with any other provisions of or deadlines contained in this Consent Order or the Statement of Work, including failure to comply with any other deadline contained in this Order or the Workplan: \$1,000 for days 1 to 15; and \$2000 for every day thereafter.

Upon receipt of written demand by EPA, Respondents shall make payment to EPA within 20 days and interest shall accrue on late payments in accordance with Section VII of this Order (Reimbursement of Costs).

Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Order. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether EPA has notified Respondents of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondents' obligations to complete the performance of the work required under this Order. Stipulated penalties shall accrue, but need not be paid, during any dispute resolution period concerning the particular penalties at issue. If Respondents prevail upon resolution, Respondents shall pay only such penalties as the resolution requires. In its unreviewable discretion, EPA may waive its rights to demand all or a portion of the stipulated penalties due under this Section. Such a waiver must be made in writing.



## **XI. RESERVATION OF RIGHTS AND STATUTORY PENALTIES**

Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

Violation of any provision of this Order may subject Respondents to civil penalties of up to twenty-five thousand dollars (\$25,000) per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondents may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondents violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

## **XII. OTHER CLAIMS**

By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be a party or be held out as a party to any contract entered into by the Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Order.

Except as expressly provided in Section XIII (Covenant Not To Sue), nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondents or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not

limited to any claims of the United States for costs, damages and interest under Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a).

This Order does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). The Respondents waive any claim to payment under Sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, and 9612, against the United States or the Hazardous Substance Superfund arising out of any action performed under this Order.

No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

#### **XIII. COVENANT NOT TO SUE**

Except as otherwise specifically provided in this Order, upon issuance of the EPA notice referred to in Section XVII (Notice of Completion), EPA covenants not to sue Respondents for judicial imposition of damages or civil penalties or to take administrative action against Respondents for any failure to perform removal actions agreed to in this Order except as otherwise reserved herein.

Except as otherwise specifically provided in this Order, in consideration and upon Respondents' payment of the response costs specified in Section VII of this Order, EPA covenants not to sue or to take administrative action against Respondents under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for recovery of past and oversight costs incurred by the United States in connection with this removal action and this Order. This covenant not to sue shall take effect upon the receipt by EPA of the payments required by Section VII (Reimbursement of Costs).

These covenants not to sue are conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Order. These covenants not to sue extend only to the Respondents and do not extend to any other person.

#### **XIV. CONTRIBUTION PROTECTION**

With regard to claims for contribution against Respondents for matters addressed in this Order, the Parties hereto agree that the Respondents are entitled to protection from contribution actions or claims to the extent provided by Section 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4). Nothing in this Order precludes Parties from asserting any claims, causes of action or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery.

#### **XV. INDEMNIFICATION**

Respondents agree to indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action: (A) arising from, or on account of, acts or omissions of Respondents and Respondents' officers, heirs, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, in carrying out actions pursuant to this Order; and (B) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents, and any persons for performance of work on or relating to the Site, including claims on account of construction delays. Nothing in this Order, however, requires indemnification by Respondents for any claim or cause of action against the United States based on negligent action taken solely and directly by EPA (not including oversight or approval of plans or activities of the Respondents).

#### **XVI. MODIFICATIONS**

Modifications to any approved plan or schedule may be made by mutual agreement of Respondents and the OSC in writing or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing within 7 business days; however, the effective date of the modification shall be the date of the OSC's oral direction. Any other requirements of this Order may also be modified in writing by mutual agreement of the parties.

If Respondents seek permission to deviate from any approved plan or schedule, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and

its basis.

No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondents shall relieve Respondents of their obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

#### **XVII. FINANCIAL ASSURANCE**

Within 30 days of the effective date of the Administrative Order on Consent, Respondent Eliskim shall establish and maintain financial security in the amount of \$4,960,000 in one or more of the following forms:

- a) A surety bond guaranteeing performance of the Work;
- b) One or more irrevocable letters of credit equalling the total estimated cost of the work.
- c) A Trust Fund;
- d) A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Respondents; or
- e) A demonstration that one or more of the Respondents can satisfy the requirements of 40 C.F.R. § 264.143(f).

If Respondent Eliskim seeks to demonstrate the ability to complete the work through a guarantee by a third party pursuant to paragraph d) above, Respondent shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. § 264.143(f). In the event that U.S. EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Respondent Eliskim shall, within 30 days of receipt of notice of EPA's determination, obtain and present to U.S. EPA for approval one of the other forms of financial assurance listed above. Respondents' inability to demonstrate financial ability to complete the work shall not excuse performance of any activities required by this Order.

Respondent Eliskim may change the form of financial assurance provided under this section at any time, upon notice to and approval by U.S.EPA, provided that the new form of assurance meets the requirements of the Section.

#### **XVIII. NOTICE OF COMPLETION**

When EPA determines, after EPA's review of the Final Report, that all work has been fully performed in accordance with this Order, except for certain continuing obligations required by this Order (e.g., record retention, payment of costs), EPA will provide written notice to the Respondents. If EPA determines that any removal activities have not been completed in accordance with this Order, EPA will notify the Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan if appropriate to correct such deficiencies. The Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure to implement the approved modified Work Plan shall be a violation of this Order.

#### **XIX. SEVERABILITY**

If a court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

#### **XX. EFFECTIVE DATE**

This Order shall be effective upon receipt by Respondents of a copy of this Order signed by the Director, Superfund Division, EPA Region 5.

IN THE MATTER OF:

True Temper Sports Site  
Geneva, Ohio

**SIGNATORIES**

Each undersigned representative of a signatory to this Administrative Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document. The signatures are attached on the following pages.

IT IS SO ORDERED AND AGREED

BY: \_\_\_\_\_

DATE: 1/22/97

William E. Munoz, Director  
Superfund Division  
United States Environmental Protection Agency  
Region 5

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IN THE MATTER OF:

True Temper Sports Site  
Geneva, Ohio

Agreed this \_\_\_\_\_ day of December, 1996

By

(Type Name & Title) Craig R. Zins, City Manager  
City of Geneva

IN THE MATTER OF:

True Temper Sports Site  
Geneva, Ohio

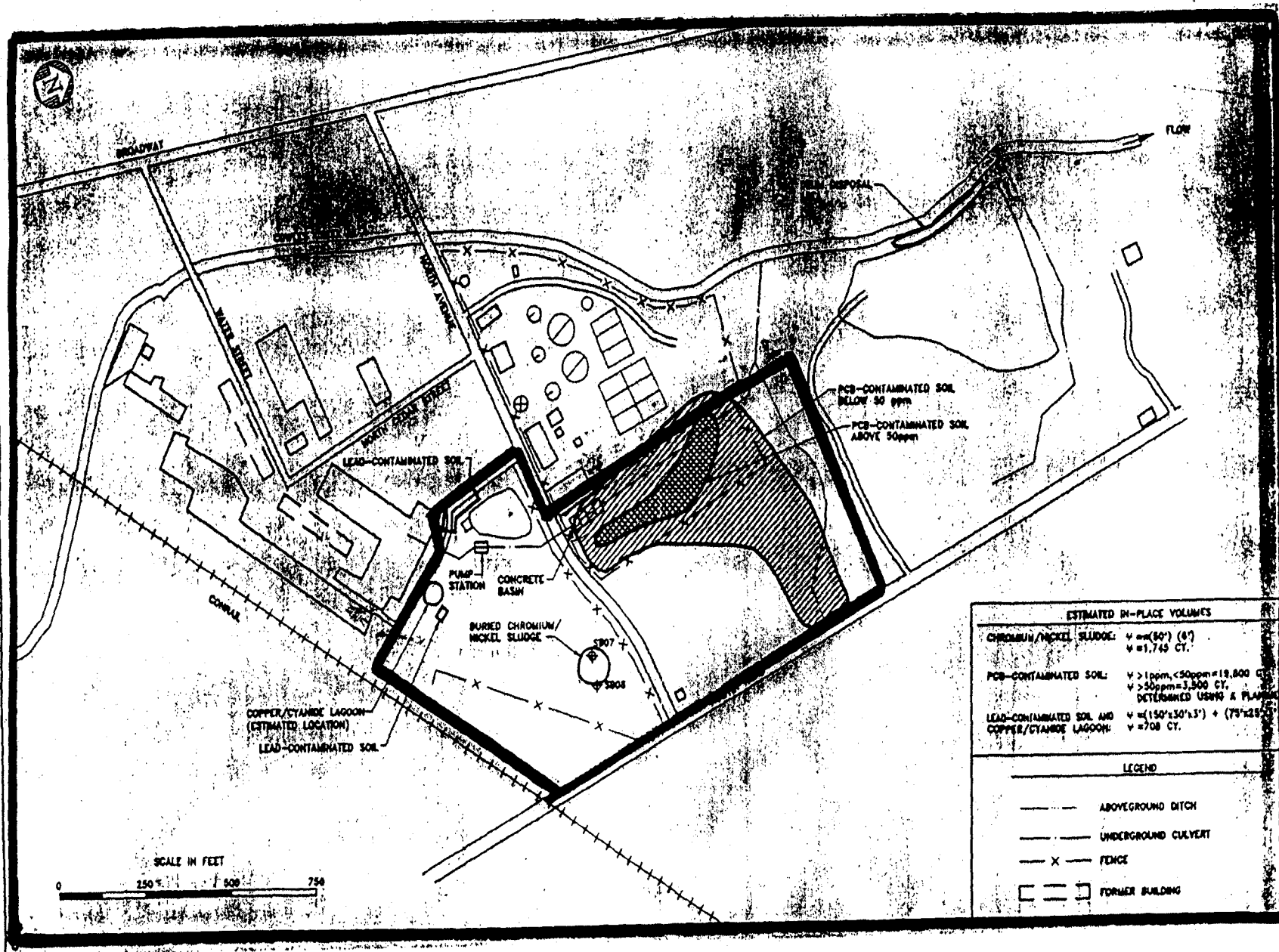
Agreed this 17th day of December, 1996.

By

(Type Name) David G. Fannin, Vice President  
Eliskim, Inc.



ATTACHMENT A



ESTIMATED IN-PLACE VOLUMES	
CHROMIUM/NICKEL SLUDGE:	$V = \pi(50')^2(8')$ $V = 1,745 \text{ CY.}$
PCB-CONTAMINATED SOIL:	$V > 100\text{ppm}, < 50\text{ppm} = 19,800 \text{ CY.}$ $V > 50\text{ppm} = 3,500 \text{ CY.}$ DETERMINED USING A PLANNING
LEAD-CONTAMINATED SOIL AND COPPER/CYANIDE LAGOON:	$V = (150' \times 30' \times 3') + (75' \times 25' \times 3')$ $V = 7,088 \text{ CY.}$

LEGEND	
---	ABOVEGROUND DITCH
---	UNDERGROUND CULVERT
X	FENCE
□	FORMER BUILDING

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

IN THE MATTER OF:	)	Docket No. V-W-97-C-383
	)	
True Temper Sports Facility Site	)	ADMINISTRATIVE ORDER BY
185 Water Street	)	CONSENT PURSUANT TO
Geneva, Ohio	)	SECTION 106 OF THE
	)	COMPREHENSIVE
	)	ENVIRONMENTAL RESPONSE,
Respondents:	)	COMPENSATION, AND
	)	LIABILITY ACT OF 1980,
	)	as amended, 42 U.S.C.
	)	§ 9606(a)
	)	
	)	
Eliskim, Inc.,	)	
formerly known as True Temper	)	
Corporation,	)	
	)	
City of Geneva, Ohio	)	

**FIRST AMENDMENT OF THE ADMINISTRATIVE ORDER ON CONSENT SIGNED  
JANUARY 22, 1997**

This is an amendment of the Administrative Order on Consent ("AOC") entered into by Eliskim, Inc., the City of Geneva, Ohio, and U.S. EPA on January 22, 1997 pursuant to Sections 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606(a), 9607, and 9622. The 1997 AOC is attached as Exhibit 1, and incorporated herein by reference.

WHEREAS, the 1997 AOC required that, among other things, Eliskim, Inc. and the City of Geneva, Ohio (hereafter "Respondents") excavate and dispose of soils contaminated with PCBs over 1 mg/kg at either a TSCA landfill if PCB concentrations are equal to or over 50 mg/kg, or at a nonhazardous waste landfill if PCB concentrations are less than 50 mg/kg. This cleanup level was based on the TSCA PCB Spill Policy at 40 C.F.R. Part 761, Subpart G, which provides guidelines for spill cleanups and which U.S. EPA determined should be considered for the removal action.

WHEREAS, Respondents have been conducting the removal action at the True Temper Sports Facility Site. To date, Respondents have disposed of approximately 12,000 cubic yards of soil contaminated with PCB concentrations less than 50 mg/kg, and approximately 13,800 cubic yards of soil contaminated with PCB concentrations of 50 mg/kg or more.

WHEREAS, on August 28, 1998, EPA's final rule amending 40 CFR Parts 750 and 761 on disposal of PCBs (63 Fed. Reg. 35384) became effective. Section 761.61 of this rule sets out an applicable or relevant appropriate cleanup level (an ARAR) for bulk PCB remediation waste. For this Site, which is a low occupancy area under the rule, § 761.61 sets a cleanup level for the PCB-contaminated soil of 25 mg/kg.

WHEREAS, there remains on the True Temper Site additional PCB-contaminated soil to be disposed of.

WHEREAS, Respondents and U.S. EPA agree to amend the 1997 AOC to revise the cleanup standard for PCB-contaminated soil to allow Respondents to use the new cleanup level set out in the August 28, 1998 TSCA PCB disposal rule.

WHEREAS, the Statement of Work has been amended to revise the cleanup standard for PCB-contaminated soil in accordance with this Amendment to the AOC.

#### ORDER

IT IS HEREBY ORDERED that the following amendments be made to the 1997 AOC:

1. Section V, the Order, Item 2., Work to Be Performed, paragraph c., shall be amended to read as follows for the completion of the removal action:

c. **PCB-Contaminated Soil** - Excavate and dispose of soils contaminated with PCBs over 25 mg/kg at either a TSCA landfill if PCB concentrations are equal to or over 50 mg/kg or at a nonhazardous waste landfill if PCB concentrations are less than 50 mg/kg.

2. Section V, the Order, Item 2., Work to Be Performed, the last sentence shall be amended to read as follows:

The Work to be performed under the AOC and this Amendment shall be performed in accordance with the Amended Statement of Work (SOW) which is attached as Exhibit 2 and incorporated by reference into this Amendment to the 1997 AOC.

3. All terms and provisions of the 1997 AOC shall apply to this Amendment to the AOC.

This Amendment to the 1997 AOC shall be effective upon signature by the Director, Superfund Division, EPA Region 5.

SIGNATORIES

Each undersigned representative of a signatory to this Amendment to the Administrative Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Amendment and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document. The Signatures continue onto the next page.

IT IS SO ORDERED AND AGREED

BY: \_\_\_\_\_  
William E. Muno, Director  
Superfund Division  
U.S. EPA, Region 5

Date: 11/30/98

BY: \_\_\_\_\_  
Janet Kelley, Vice President  
Eliskim, Inc.

Date: 11/5/98

## IN THE MATTER OF:

True Temper Sports Site  
Geneva, Ohio  
First Amendment of the 1997 AOC

Agreed this 17 day of November, 1998

BY:

Craig Zins City Manager  
City of Geneva

